

## **Division 4: Criminal History, Sex Offender Registry, and Child Abuse or Neglect Findings**

### **§745.661. What types of criminal convictions may affect a subject's ability to be present at an operation?**

(a) A felony or misdemeanor conviction under Texas law, the laws of another state, or federal law may affect a subject's ability to be present at an operation. There are three charts with information regarding specific crimes that may affect a subject's ability to be present at an operation. Each chart specifies whether a conviction permanently or temporarily bars a subject from being present at an operation, whether a subject is eligible for a risk evaluation, and whether a subject who is eligible for a risk evaluation may be present at an operation pending the outcome of the risk evaluation. The three charts are:

- (1) Licensed or Certified Child Care Operations: Criminal History Requirements;
- (2) Foster or Adoptive Placements: Criminal History Requirements; and
- (3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(b) HHSC will review the three charts listed in subsection (a) of this section annually to determine whether any changes are needed. HHSC will publish any changes in January as an "In Addition" document in the Texas Register and make them available on the Licensing public website. A written public comment period will be available for 30 days following publication. HHSC will consider any written comments HHSC receives during the 30-day time period, and provide a response to the commenter that will also be included on the Licensing public website. In response to any comment, HHSC may implement changes to a chart, withdraw changes to a chart, or alter a chart based on a reasoned justification. If HHSC changes a chart, HHSC will subsequently re-publish the chart in the "In Addition" section of the Texas Register.

- (c) A subject currently on parole for a felony offense must have an approved risk evaluation prior to being present at an operation.
- (d) For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section, a subject convicted within the past 10 years for the offense must have an approved risk evaluation prior to being present at an operation.
- (e) Substantially similar federal offenses and offenses in other states will be treated the same as the similar Texas offense. On a case-by-case basis, HHSC will determine whether a federal offense or an offense in another state is substantially similar to a Texas offense by comparing the legal elements of each offense, including the mens rea (meaning the state of mind of the person, i.e., an intentional, knowing, or reckless act), and assessing the similarity of the legal elements.
- (f) This rule does not apply to a person who requires a background check under this subchapter because of the person's responsibilities as a DFPS or Licensing employee or volunteer. The person will have a background check conducted by DFPS or HHSC as part of the person's application to become an employee or volunteer.

## **§745.663. For the purpose of this subchapter, when do criminal convictions include deferred adjudication community supervision?**

For an offense that may affect a subject's ability to be present at an operation, deferred adjudication community supervision is a criminal conviction as follows:

**Figure: 40 TAC §745.663**

<b>If:</b>	<b>Then deferred adjudication community supervision for an offense is:</b>
(1) We are not issuing or denying a permit to the subject or revoking a permit that the subject holds,	A criminal conviction until the subject successfully completes the terms of community supervision, when the court dismisses the proceedings and discharges the subject.